

Bluth



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** The Howard Finley Corporation  
**File:** B-226984.2  
**Date:** November 21, 1988

## DIGEST

1. Amounts claimed for costs of filing and pursuing a protest may be recovered to the extent that the claim is adequately documented and shown to be reasonable. To the extent that the claim is inadequately documented and includes items not granted in the bid protest decision, or for which there is no legal authority for payment, claimant is not entitled to recovery.
2. Claimant is not entitled to recover proposal preparation costs where such costs were not awarded in prior decision and protester did not request reconsideration, as erroneous or inadequate, of the recommended remedy within the 10-working-day period provided by the General Accounting Office's Bid Protest Regulations.

## DECISION

The General Services Administration (GSA) requests that we determine the amount that the Howard Finley Corporation is entitled to recover from the GSA for the cost of pursuing its protest, including attorneys' fees.

In Howard Finley Corp., 66 Comp. Gen. 545 (1987), 87-2 CPD ¶ 4, we sustained Finley's protest that it was improperly excluded from the competitive range because the agency did not consider price proposals in establishing the competitive range, in violation of Federal Acquisition Regulation § 15.609(a). Further, we found that Finley was entitled to recover the costs of pursuing its protest, including attorneys' fees. Because Finley and GSA have been unable to reach an agreement concerning the amount of its claims, GSA has requested that we determine the amount of entitlement pursuant to 4 C.F.R. § 21.6(e).

043944/137359

Finley has requested reimbursement in the amount of \$1,255 for filing and pursuing the bid protest, \$2,379 for proposal preparation and delivery costs, and \$3,873 for profit (fixed fee) lost, a total of \$7,507. GSA sent Finley a check in the amount of \$1,155, which Finley returned as inadequate, representing the cost to Finley of filing and pursuing the bid protest, minus \$100 for an attorney fee which is unsubstantiated. GSA refused to reimburse the \$100 attorney fee because it found it could not have been related to the protest, inasmuch as the invoice purporting to substantiate the fee predates both the submission of Finley's proposal and the filing of the protest. GSA further found that Finley is not entitled to the costs of proposal preparation and delivery as these costs were not awarded by our decision and that there is no basis for the payment of lost profits.

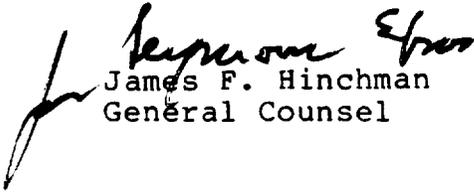
We agree with GSA. A protester seeking to recover the cost of pursuing its protest must submit evidence to support its monetary claim. Malco Plastics, B-219886.3, Aug. 18, 1986, 86-2 CPD ¶ 193. Finley adequately documented \$1,155 in costs for filing and pursuing the bid protest. However, as pointed out by GSA, in support of its claim of \$100 for an attorney fee, Finley submitted an invoice that substantially predated the submission of initial proposals and the protest. It is inconceivable that Finley had a discussion with its attorney concerning its exclusion from the competitive range prior to when Finley had even submitted its proposal for this procurement. Since Finley has failed to prove that the fee was attributable to the filing and pursuing of this protest, we concur in GSA's denial of this aspect of the claim.

As to Finley's claim for \$2,379 in proposal preparation costs, as GSA points out, Finley was not awarded those costs by our decision. Under our Bid Protest Regulations, Finley was obligated to file any request for reconsideration of our decision not later than 10 working days after the basis for reconsideration was known or should have been known, whichever was earlier. 4 C.F.R. § 21.12(b) (1987). If Finley thought that the statutory remedy which we recommended was in error or inadequate, it should have requested our reconsideration of that aspect of our June 30, 1987, decision within that 10-day period. Since Finley did not do so, our decision remains final.

Our decision also did not award Finley any anticipated profits. Indeed there is no legal authority that permits the recovery of anticipated profits, even in the presence of wrongful action. Consolidated Devices, Inc., B-228065, Aug. 24, 1987, 87-2 CPD ¶ 201.

Finally, Finley claims \$2,050 in attorneys' fees associated with pursuing its claim. We deny this claim since such costs are not recoverable in the absence of express statutory or contractual authority. Malco Plastics, B-219886.3, supra.

We therefore determine that Finley is entitled to recover the \$1,155 previously tendered it by GSA as reimbursement of costs associated with its protest.

  
James F. Hinchman  
General Counsel